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August 28, 2003

Bob Leake  
State Engineer's Office  
Division of Water Rights  
State and County Building  
152 East 100 North  
Vernal, Utah 84078

Re: City of Roosevelt  
Water Right No. 43-3035 (Durigan Well)

**RECEIVED**  
SEP - 5 2003  
WATER RIGHTS  
SALT LAKE

Dear Mr. Leake:

In the State Engineer's Memorandum Decision approving the change application for the water right referenced above, the City of Roosevelt was permitted to divert two water rights associated with the Sprouse Ranch through what the City calls the Durigan Well. One of the changed rights, Water Right No. 43-3035, was originally for the Durigan Ditch, a Uinta River surface diversion with a priority date of September 27, 1905. Under the approved change, the City was permitted to divert up to a maximum of 1.71 cfs under this right, and 0.49 cfs under a supplemental groundwater right, Water Right No. 43-7300, approved (as I recall) in the 1970s.

The Memorandum Decision states, with respect to the changed surface right totaling 1.71 cfs, that:

Because part of the change is based on a Uinta River right, that portion of the change would be subject to the flow rates in the Uinta River and the respective priorities of the right on the Uinta River. That portion would be restricted during the time that the underlying water rights are cut by priority.

Memorandum Decision at page 2.<sup>1</sup>

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<sup>1</sup> The Memorandum Decision is premised upon a presumption that the supplemental groundwater right was not subject to the priority system on the Uinta River and that the changed portion of that right, 0.49 cfs, is not subject to the priority system on the River. The Tribe asserted at the hearing

As required by the Memorandum Decision, the City's right to divert Water Right No. 43-3035 in the amount of 1.71 cfs is limited to those times in which the 1905 right is in priority. When the right is out of priority, only Water Right No. 43-7300 in the amount of 0.49 cfs can be pumped through the Durigan Well. [0.49 cfs yields 0.972 acre-feet in a 24 hour period ( $0.49 \text{ cfs} \times 1.983 = 0.97167 \text{ acre-feet/per day}$ )].

During the State Engineer's consideration of the City's change application and discussion between the Tribe and City officials, the City agreed to provide the Tribe with meter readings from the Durigan Well. I recently requested and received those readings for May, June and July, 2003. A copy of the July meter readings is enclosed. The notations under "Hours" and "Comments" are mine not the City's. In reviewing the July record, it appears to me that the City has been diverting water out of priority through the Durigan Well. It is my understanding that throughout the month of July, the only surface water right in priority on the Uinta River was the Tribe's 1861 priority. All other surface rights were out of priority and received water, if any, only from storage. Therefore, at no time in July, 2003, should the City have been diverting water through the Durigan Well under Water Right No. 43-3035, leaving it with a maximum diversion of 0.49 cfs (for a total of 0.972 acre-feet per day). However, a review of the City's meter records indicates that on at least 8 of the 14 days in July the City diverted water through the well it over-diverted and took water out-of-priority. Those out-of-priority diversions totaled 10.128 acre-feet or approximately 43% of the City's total diversions for the month.

Total Amount Diverted on	July 7 <sup>th</sup> , 14 <sup>th</sup> , 17 <sup>th</sup> , 19 <sup>th</sup> , 21 <sup>st</sup> , 26 <sup>th</sup> , 28 <sup>th</sup> & 31 <sup>st</sup> :	17.901 acre-feet
Total Amount in priority @ 0.49 cfs ( $0.49 \times 1.983 \times 8$ ):		<u>7.773 acre-feet</u>
Total Amount Diverted Out-of-Priority:		10.128 acre-feet

The amount over-diverted came directly from the Tribe's water right because the 1861 tribal water right was the only right in priority on these days.

You will recall that during the hearing on the City's change of water right application, extensive testimony was submitted by the protesters expressing concern about the ability to properly administer and monitor the City's diversions through the Durigan Well. It appears that those fears were well-founded and, while the amounts taken out of priority during July were relatively small, the City has already violated the terms of its approved change which it is legally obligated to follow

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and continues to assert now that the groundwater rights in such close proximity to the River have an impact on the surface flows and are tributary (connected) to the surface system. As such, those groundwater rights should be subject to the priority system applicable to surface rights to assure that they do not interfere with senior surface rights.

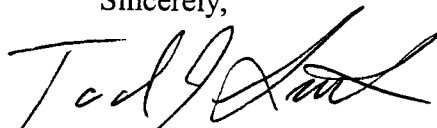
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and enforce. As the City increases its use of the Durigan Well, violations and out of priority diversions at the same percentage rate would result in much larger quantities of out-of-priority diversions through the Durigan Well and much larger impacts to the stream and groundwater system. I also note that the Tribe and other water users in the area cannot be required to continually attempt to monitor the City's use of this and its other wells. It is incumbent upon the City and the State Engineer to assure that the City diverts water in strict compliance with the terms, conditions and limitations of its permits.

I request that the State Engineer order the City: 1) to cease any current out-of-priority diversions through the Durigan Well; 2) to provide a record of the water diverted through the well during August, 2003; and, 3) to arrange with the State Engineer and the Uinta Indian Irrigation Project an appropriate methodology, time frame and locations to re-pay the amounts of water diverted out-of-priority.

Thank you for your assistance in this matter. I look forward to hearing from you.

Sincerely,



Tod J. Smith

cc: Members, Tribal Business Committee  
Jerry Olds, State Engineer  
Brad Hancock  
Lynn Hansen

## ROUTING & REQUEST

**Please...**

- ☐ Read
- ☐ Handle
- ☐ Approve

**And...**

- ☒ Forward
- ☐ Return
- ☐ Keep or Toss
- ☒ Review with Me

To: Lee S & Bob L.  
How do we address this  
request?

From: JDO

Date: 9/3/03

No water was produced from Durigan during January, February, March, April 2003.

DURIGAN SPRINGS  
WATER READING  
FOR MONTH OF July 103

DATE READ	PRESENT READING	HOURS	COMMENTS
7/2	24,265,700	Ø	
7/3	24,265,700	Ø	
7/7	24,664,700	349,000	1.224 af ✓
7/8	24,965,800	301,100	0.423 af
7/9	25,260,000	294,200	0.903 af
7/10	25,555,000	295,000	0.905 af
7/14	26,800,000	1,245,000	3.820 af ✓
7/17	27,698,500	898,500	2.758 af ✓
7/19	28,309,500	611,000	1.875 af ✓
7/21	28,900,000	590,500	1.812 af ✓
7/22	29,215,000	315,000	0.946 af
7/23	29,530,600	315,600	0.968 af
7/26	30,419,400	888,800	2.727 af ✓
7/28	31,015,300	595,900 1285	1.828 af ✓
7/29	31,310,300	295,000	0.905 af
7/31	31,915,800	605,500	1.858 af ✓
	97.95		Total G.L. for the
			July 2003
			7,757,800

Out of priority maximum 0.98 af per day = 0.49 cfs @ 24 hours

23.801 af